Trinity County Bank v. Haas (1907) 151 Calif. 553, 91 Pac. 385. Thus it would seem that under a sound interpretation such a power as was given by the mortgage provision in question must be exercised to derive the benefit from it. A mortgage may provide that on default of any payment title is to become absolute or it may provide that the mortgagor may at his option declare the whole amount due and foreclose for it. The court in the instant case seems in error in failing to make any distinction between the two.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—INFANTS.—The defendant's servant, while operating an automobile in the course of his employment, negligently ran over and injured the plaintiff's eleven-year-old son, from which injuries the son died. The plaintiff then brought an action for the wrongful death. *Held,* that the plaintiff should not recover, because his son had been guilty of contributory negligence. *Ferrand v. W. H. Cook & Co.* (1919, La.) 83 So. 362.

The plaintiff sued the defendant for an injury to her four-year-old son, caused by the negligent operation of one of the defendant's trains. The defendant endeavored to prove contributory negligence. *Held,* that the plaintiff should recover, because the child could not be guilty of contributory negligence. *Ryan v. Louisiana Ry. & Nav. Co.* (1919, La.) 83 So. 371.

The law of contributory negligence applies equally to infants and adults, except where a child is too young to be capable of exercising judgment or discretion. But the age, judgment, intelligence, and in some cases the experience, of the particular child must be taken into account in determining his negligence. See *Karpeles v. Heine* (1919) 227 N. Y. 74, 124 N. E. 101, 102, (1919) 29 YALE LAW JOURNAL, 234 (effect of employment of an infant on his contributory negligence). It is generally held that a child of six years or under, is incapable of contributory negligence. *Chicago City Ry. v. Tuohy* (1902) 196 Ill. 410, 63 N. E. 997; see *Great Southern R. R. v. Snodgrass* (1918, Ala.) 79 So. 125, 127; *contra, DiMaio v. Yolen Bottling Works* (1919) 93 Conn. 597, 107 Atl. 497. A statute classifying specified acts as contributory negligence in law has been construed to apply to a boy less than seven years of age. *Erie R. R. v. Hilt* (1918) 38 Sup. Ct. 435, (1918) 27 YALE LAW JOURNAL, 1095. Whether or not a child between seven and fourteen years is guilty of contributory negligence is a question of fact for the jury. See *Johnson's Adm. v. Rutland Ry.* (1919, Vt.) 106 Atl. 682, 684. It would seem that a child over fourteen is presumed to be capable of using some degree of reasonable care for his own protection. See *Sherris v. Northern Pac. Ry.* (1918) 175 Pac. 269, 270, 55 Mont. 189, 194. It is submitted that a practical test to determine an infant's contributory negligence is to require the use of that degree of care which would commonly be exercised by the average child of his age, intelligence, and experience. An objective test which is sometimes employed requires of infants that degree of care which is commonly exercised by the average child of his age. *Cf. Roberts v. Ring* (1919, Minn.) 173 N. W. 437; see 1 Shearman & Redfield, *Law of Negligence* (6th ed. 1913) 174. It seems, however, that the subjective test is the better because infants differ so much more than adults in their subjective selves. The instant cases represent the existing law and seem sound. On the doctrine of imputing the parents' negligence to the child, see (1914) 23 YALE LAW JOURNAL, 553; (1915) 24 *ibid.*, 259.

NEGLIGENCE—PHYSICIANS AND SURGEONS—DEGREE OF CARE.—In an action for alleged malpractice in an operation, the court instructed the jury that it was the defendant's duty to exercise such reasonable skill and care as an ordinarily skillful and careful surgeon is accustomed to exercise under like circumstances. The defendant took exceptions to the instruction. *Held,* that the exception